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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,214	09/09/2003	John Dykstra	57983.000152	9151

7590
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EXAMINER

SU, BENJAMIN

ART UNIT

PAPER NUMBER

2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/657,214

Applicant(s)

DYKSTRA, JOHN

Examiner

Benjamin Su

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7 - 11 is/are rejected.
- 7) ☒ Claim(s) 3-6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7, 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 7, it is not clear if it is a method claim or an apparatus claim.

For claim 8, it is not clear if it is a method claim or an apparatus claim.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7, 8 are rejected under 35 U.S.C. 101 because for claim 7, it is signal per se.

For claim 8, the recitation of "one processor readable carrier for storing a computer program of instructions configured to be readable by at least one processor

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for instructing the at least one processor to execute a computer process” is not a computer readable medium and is not encoded with computer executable instructions, therefor it does not produce the functionality of the claimed invention hence it does not produce a tangible result, thus it is non-statutory. It is suggested applicant to change to --computer readable medium encoded with computer executable instructions--.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 9, 10, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Holmberg (US 6247141).

Holmberg discloses, regarding claim 1, a method for synchronizing redundant network elements, the method comprising:

transmitting a checkpoint indication signal to a primary element and at least one backup element (see column 6, lines 3 - 14, wherein the requests correspond to a checkpoint indication signal), wherein each of the primary element and the at least one backup element has one or more connections to a network (see column 3, lines 3 – 10);

generating a first checkpoint that is indicative of a first status of the primary element associated with a first arrival time of the checkpoint indication signal at the

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primary element (see column 6, lines 15 – 18, wherein the reply message corresponds to a first checkpoint);

generating a second checkpoint that is indicative of a second status of the at least one backup element associated with a second arrival time of the checkpoint indication signal at the at least one backup element (see column 6, lines 21 – 28, wherein the acknowledge message corresponds to a second checkpoint);

and comparing the first checkpoint and the second checkpoint to determine a synchronization between the primary element and the backup element (see column 6, lines 62 – 65);

claims 9 is rejected the same reason as above.

Holmberg discloses, regarding claim 10, a method for synchronizing redundant network elements, the method comprising:

receiving at a backup element a checkpoint indication signal (see column 6, lines 22 – 25);

generating a first checkpoint that is indicative of a status of the backup element associated with an arrival time of the checkpoint indication signal at the backup element (see column 6, lines 26 – 29, wherein the acknowledge message corresponds to a first checkpoint);

receiving a second checkpoint from a primary element (see column 6, lines 22 – 25, the reply message is originally from the primary server, which corresponds to a checkpoint);

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and comparing the first checkpoint and the second checkpoint to determine a synchronization between the primary element and the backup element (see column 6, lines 62 – 65).

Claim 11 is rejected the same reason as above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holmberg.

Holmberg discloses, regarding claim 2, all the subject matter of the claimed invention as recited in paragraph 6 of this office action and the checkpoint indication signal is transmitted from a source inside the network.

Holmberg fails to teach the checkpoint indication signal is transmitted from a source inside the network (see column 6, lines 4 - 7, wherein the client application corresponds to a source).

However, it is obvious to put the source outside the network. Thus, it would have been obvious to a person of ordinary skill in the art at the time of the invention to use the checkpoint indication signal is transmitted from a source outside the network in the method taught by Holmberg in order to allow more network bandwidth to be used by nodes inside the network.

Allowable Subject Matter

10. Claims 3 – 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zetts (US 6378129) and Baskey et al. (US 6148410).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Su whose telephone number is 571-270-1423. The examiner can normally be reached on Monday - Friday 10 - 3 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BZS



RICKY Q. NGO
SUPERVISORY PATENT EXAMINER